

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RAUL SANTOS SILVAS,
Petitioner.

No. 2 CA-CR 2016-0072-PR
Filed June 10, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County
No. CR20063683
The Honorable Richard S. Fields, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Raul Santos Silvas, Buckeye
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

ECKERSTROM, Chief Judge:

¶1 Petitioner Raul Silvas seeks review of the trial court’s order dismissing his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 After a jury trial, Silvas was convicted of two counts of aggravated assault with a deadly weapon or dangerous instrument, aggravated robbery, armed robbery, and theft of a means of transportation. The trial court imposed a combination of presumptive and mitigated, concurrent and consecutive, prison terms totaling 23.75 years. We affirmed Silvas’s convictions and sentences on appeal, *State v. Silvas*, No. 2 CA-CR 2008-0165 (memorandum decision filed Mar. 19, 2009), and denied relief on his petitions for review of the court’s denial of relief on his first two petitions for post-conviction relief, *State v. Silvas*, No. 2 CA-CR 2010-0362-PR (memorandum decision filed Apr. 26, 2011), No. 2 CA-CR 2012-0384-PR (memorandum decision filed Jan. 24, 2013).

¶3 Silvas filed a successive Rule 32 petition in November 2015, asserting he had received ineffective assistance of trial and Rule 32 counsel, to wit, that trial counsel had not advised him of an eleven-year plea agreement offered by the state and that Rule 32 counsel had not raised this claim in his first post-conviction proceeding. Silvas also challenged his sentences and maintained he was entitled to an evidentiary hearing. In its ruling dismissing Silvas’s claims, the trial court determined they were precluded and

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noted that the record did not, in any event, support the claim regarding the eleven-year plea offer. *See* Ariz. R. Crim. P. 32.2(a).

¶4 On review, Silvas repeats his claims of ineffective assistance, arguing the trial court erred by summarily dismissing his petition and maintaining he is entitled to an “evidentiary hearing to [reinstate] the plea offer of 11 years.” He contends he would have accepted the eleven-year plea offer if he had known about it and that his first Rule 32 attorney should have challenged trial counsel’s failure to tell him it existed.¹

¶5 Because Silvas could have raised, and in fact did raise, a claim of ineffective assistance of trial counsel in his first Rule 32 proceeding, *Silvas*, No. 2 CA-CR 2010-0362-PR, ¶ 2, the trial court correctly found his claim precluded. *See* Ariz. R. Crim. P. 32.2(a)(2), (3). Additionally, in our ruling denying relief on Silvas’s second petition for review, we noted the court properly had found that any claims of ineffective assistance of trial counsel were precluded because they could have been raised in his first Rule 32 petition. *Silvas*, No. 2 CA-CR 2012-0384-PR, ¶ 6; *see State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002) (generally, defendant must raise claims of ineffective assistance of counsel, if at all, in initial Rule 32 proceeding). And, with respect to Silvas’s claim that Rule 32 counsel was ineffective, we previously pointed out to Silvas that “a non-pleading defendant [like him] has no cognizable claim under Rule 32 based on the purported ineffectiveness of Rule 32 counsel.” *Silvas*, No. 2 CA-CR 2010-0362-PR, ¶ 5; *see State v. Mata*, 185 Ariz. 319, 336-37, 916 P.2d 1035, 1052-53 (1996).

¶6 Finally, to the extent Silvas relies on *Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309 (2012), to argue that his claims are not precluded because that case constitutes a significant change in the law under Rule 32.1(g), we disagree. First, other than checking the box for Rule 32.1(g) on his form petition for post-conviction relief

¹Although Silvas states counsel failed to both “relay[]” and “secure” the eleven-year plea agreement, it appears he is arguing counsel did not advise him of its existence.

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and mentioning *Martinez* in his petition for review, Silvas has not made any meaningful argument to support a claim based on a significant change in the law. Moreover, this court has determined that *Martinez* did “not alter established Arizona law,” and does not provide a basis for relief pursuant to Rule 32.1(g). *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 6, 307 P.3d 1013, 1014 (App. 2013).

¶7 Accordingly, we grant Silvas’s petition for review but deny relief.